IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 273 of 2000.

Judgement reserved on: 21.8.2007

Date of decision: 5.9.2007.

Chaman Lal **…….Appellant**

Vs.

State of H.P. **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Appellant : Mr.Praneet Gupta, Advocate.

For the Respondent : Mr. M.L Chauhan, Addl. Advocate General.

Kuldip Singh, Judge.

1. The accused Chaman Lal has filed this appeal against his conviction in Sessions Trial No.29 of 1997 by learned Special Judge, Mandi, whereby learned Sessions Judge by judgment of conviction and sentence dated 23.5.2000 has sentenced the accused under Section 376 IPC to undergo rigorous imprisonment for a term of four years and to pay a fine of Rs.4,000/- and in default of payment of fine to undergo rigorous imprisonment for additional term of 6 months. Out of fine amount, if realized, a sum of Rs.3000/- was ordered to be paid to prosecutrix as compensation.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

2. The accused was charged under Section 376 IPC read with section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for having committed rape on prosecutrix 'D', a woman belonging to Scheduled Caste (Teli) on or about 23.12.1995 in village Taroh, Police Station Balh. The accused was acquitted under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act but was convicted under Section 376 IPC as stated above.

3. The facts in brief are that on 23.12.1995 at about 7.15 P.M. the prosecutrix prepared meals which she served to the members of her family. The children of the prosecutrix remained watching the television in the old house and her father-in-law also went to sleep in the old house. The husband of prosecutrix proceeded towards his shop, the prosecutrix at about 9 P.M. came out of her kitchen and proceeded towards the courtyard of new house. The accused came there and pounced upon her and carried away her towards nearby fields. He was identified with the aid of light coming from the room. The prosecutrix asked the accused to spare her but he threatened her with dire consequences if hue and cry was raised by her.

4. The prosecutrix was taken to the nearby fields where she was dropped, she received injury on her head and became unconscious. She regained consciousness shortly thereafter and found accused was performing sexual intercourse with her and then ran away.

5. The prosecutrix could not find her salwar at the scene of occurrence and she returned to her home and narrated the incident to

her husband who had returned by that time from his shop. The report could not be lodged with the police during the night as the house of the prosecutrix is far away from the police station. On the following morning Panchayat Pardhan and other persons were informed and on their advice she came to the police station and lodged the report. The police investigated the case and challan was filed against the accused. The learned Chief Judicial Magistrate, Mandi committed the case to the Special Court (Sessions Judge) where the accused was charged as above said, he pleaded not guilty. The prosecution examined 11 witnesses. The accused denied the allegations in his statement under Section 313 Cr.P.C. The learned Special Judge convicted and sentenced the accused as stated above. The accused is in appeal.

6. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the accused has submitted that the trial Court has misconstrued, misinterpreted the evidence. The prosecution has miserably failed to bring home the charge. There are unexplained gaps in the prosecution story which is highly improbable. The statement of prosecutrix does not inspire confidence. There is no legal evidence on record for proving the guilt of the accused. The learned Additional Advocate General appearing for the State has supported the impugned judgment and has submitted that the prosecution has proved the case against accused. He has relied on the statement of prosecutrix and other material on record.

7. PW-1 Chaman Lal did not support the prosecution case. He was declared hostile and was cross-examined. He admitted his signatures on memo Ex. Ex.PW-1/B but stated that it was not prepared in his presence.

8. PW-2 Sher Singh is the husband of the prosecutrix. He has stated that he has four children. He has constructed a new house near the old house. He and his family used to sleep in the new house whereas they used to prepare food in the old house. He stated that about four years ago at about 7.30 p.m. he along with his family took meals and he went to his shop, he returned to his house at about 9.30 p.m. In the light of matchstick he saw his wife near the door of his house in a dishevelled condition. She was in a shirt and her salwar was not on her person. He took his wife inside but she was unable to speak. He knocked at the door of the old house to call his Bhabhi (Tara Devi) but the door was not opened. He called his Bhabhi at about 4.30. a.m. He called other ladies namely Mohini Devi, Guma Devi and Hathinder, his wife disclosed the incident to those ladies. He went to the house of Pardhan who told him to go to the Police Station. Police took into possession salwar from the fields. The field is about 200 feet from his house (in Hindi version 300' has been mentioned). Police packed salwar in a parcel. Memo Ex.PW-2/A was prepared by the police. The other articles were also taken into possession by the police. He has stated that salwar Ex.P-1, underwear Ex.P-2 and shirt Ex.P-3 belong to his wife. In cross examination he has stated that he could not ascertain as to what

precisely had happened in the night. He admitted that his wife did not tell anything to him during the night. He came to know about the incident in the hospital. The mouth of his wife was gagged with her dupatta and a part of dupatta was coming out of the mouth. He has stated that the place where the incident took place is uneven field having stones and earth. He has admitted that he produced the clothes of his wife to the police. He denied the suggestion that his wife received injuries because of beating given by him.

9. The prosecutrix has appeared as PW-3. She has stated that about four years back she was cleaning utensils outside the old house and then she came to new house to sleep. She was sitting outside the door of the old house to urinate. Accused came there took her up and carried her to the fields. He gagged her mouth and threw her on a stone. She became unconscious and when she regained consciousness she found that accused was committing sexual intercourse with her. He had thrown her salwar. The accused thereafter ran away. The accused had torn her shirt. She came naked to her house, her husband asked as to why she was standing naked. The blood was coming from the back of her head. She told her husband that accused had sexual intercourse with her in the fields. The wife of her husband elder brother was also called. She narrated her the incident and then they slept. On the next day they went to the police station and FIR Ex.PW-3/A was lodged. She was medically examined. In cross-examination she has stated that she was taken into the fields for about ½ k.m. from the new house.

She was carried in the arms by the accused. The field where she was thrown by the accused was full of stones and earth. She did not visit the spot again. She was not taken by the police to the spot nor she indicated the spot to the police. The string of her salwar was broken by the accused, she raised alarm but no body came to the spot when she raised alarm. She denied the suggestion that her husband had given beatings to her, as a result of which she received injuries, as her husband suspected her character. She was recalled for further examination by the Court. She again stated that she did not visit the scene of occurrence after the incident. She stated that incident was completed within the duration of one and half hours. The accused grappled with her for a considerable period and she defended herself by raising her legs towards the accused. The injury on the head was sustained by her after the sexual assault. She became unconscious after receiving the injury on her head.

10. PW-5 Dr. I.S. Kaundal has medically examined the prosecutrix and issued Medico Legal Certificate Ex.PW-5/A. He found four injuries on the persons of the prosecutrix. In cross-examination he has stated that the injuries No.1 to 4 cannot be caused commulative if a person is thrown on the ground on the left side of the body.

11. PW-6 Dr. Maulshree Lata a Gynaecologist, who examined the prosecutrix and issued Medico Legal Certificate Ex.PW-6/A, in cross examination has stated that there were no marks of struggle on the private parts of the subject.

12. PW-7 Tara Devi is the wife of elder brother of the husband of the prosecutrix. She did not support the prosecution and was declared hostile. PW-9 S.I. Rikhi Ram has stated that he was posted as SHO, P.S. Balh in the year 1995. He has stated that he inspected the spot and prepared the spot map Ex.PW-9/A. He found salwar Ex.P-1 lying on the spot which he took into possession vide memo Ex.PW-2/A. In cross-examination he has stated that prosecutrix was not present on the spot when spot map Ex.PW-9/A was prepared He did not find any blood at the place where the prosecutrix was allegedly raped. He has stated that he did not recover any underwear of the prosecutrix. The salwar was found at a distance of 1 ½ feet away from the place where prosecutrix was allegedly raped. The affidavits Ex.PW-10/A and Ex.PW-11/A were also placed on record.

13. The prosecution has not fixed the alleged place of occurrence. The prosecutrix has stated that after the incident she did not visit the place of occurrence. The spot map Ex.PW-9/A has not been prepared at the instance of prosecutrix nor even at the instance of her husband as admitted by PW-9 S.I. Rikhi Ram. It has come in evidence that the prosecutrix did not visit the place of occurrence after alleged rape. Therefore, spot map Ex.PW-9/A cannot be relied for fixing the place of occurrence.

14. It has come on record that it took about 1 ½ hours when prosecutrix was allegedly carried away from the house, raped in the fields and she returned to her house. According to the prosecution

the prosecutrix raised alarm but surprisingly no body responded to her alarms. It is not the case of the prosecution that there is no house near the place where prosecutrix was allegedly raped. PW-2 Sher Singh husband of prosecutrix has stated that place where prosecutrix was raped is at a distance of 200' to 300'. During night if a lady raises alarms in distress then her voice normally should be audible upto 200' to 300' distance, why the alarms raised by prosecutrix were not heard by any body creates suspicion in the prosecution story.

15. The prosecutrix has stated that place of occurrence was at a distance of ½ K.M. from her house. It is not believable that a man of normal built can carry a resisting normal built woman to a distance of ½ K.M. in one hand by gagging her mouth with his second hand as alleged by prosecutrix. The prosecutrix has stated that the accused had thrown her in the field, she sustained injuries and became unconscious and during this process accused raped her. It is not understandable when the accused wanted to rape the prosecutrix then why he should throw her on a stony field. It is not prosecution case that accused way laid the prosecutrix at a stony place and at that place itself he raped her. At one place in her statement the prosecutrix has stated that as a result of injuries she became unconscious and when she regained consciousness she found accused was raping her. But in her second version when she was recalled by the Court then she has stated that the injury on the head was sustained by her after the sexual assault meaning thereby that

she sustained injury on her head after she was raped. It is not her case that after sexual intercourse with her the accused threw him in the fields and then she sustained injuries on her person. This contradiction is material but has not been explained by the prosecution.

16. As per prosecution story the prosecutrix after the incident returned to her house. The prosecutrix in her statement has stated that she came naked to her house but her husband has stated that she was wearing a shirt but without salwar and her mouth was gagged with her dupatta. The said dupatta was not produced during trial, nor prosecutrix said her mouth was gagged with dupatta and she returned house with her mouth gagged with her dupatta. The husband of the prosecutrix took her inside the house. The husband has stated in his statement that his wife did not tell him any thing during the night. It is highly improbable that the wife after having been ravished against her will would not tell the husband about the occurrence or the husband would not make out anything even though wife in naked condition returned to the house from out side during night. It has come on record that PW-7 Tara Devi and some other ladies came to the house of the prosecutrix at about 4.30 a.m. and at that time prosecutrix allegedly disclosed the incident to them. Tara Devi (PW-7) did not support the prosecution and other ladies have not been examined by the prosecution. This is another circumstance which creates doubt in prosecution story.

17. The prosecution case is that the accused removed the salwar of the prosecutrix and had thrown it away and prosecutrix could not find that salwar and returned to her house without salwar. It has come in the statement of PW-9 S.I. Rikhi Ram that salwar was found at a distance of 1 ½ feet away from the place where the prosecutrix was allegedly raped. It is not believable that even in the darkness just by spreading her hands the prosecutrix could not trace her salwar when it was at a distance of 1 ½ feet where she was allegedly raped.

18. The prosecutrix has stated that before committing sexual intercourse accused had broken the string of her salwar but in cross-examination she was unable to show from where the string of the salwar was broken. There is observation of the trial Court that string was not knotted at any place. Sher Singh husband of the prosecutrix has stated that he washed the shirt of his wife which she was wearing and that shirt now is no longer in existence. In view of this, doubt has been created that prosecutrix was wearing shirt Ex.P-3 when she was allegedly raped.

19. It is the case of the prosecution that prosecutrix sustained injuries when she was thrown by the accused in the field. PW-5 Dr. I.S. Kaundal has stated that if a person falls on the ground and sustains Injury of the kind of injury No.1 mentioned In Ex.PW-5/A then there must be blood on the earth. He has also stated that if injury like injury No.1 is caused by fall on the ground or fall on the field , then earth would be present in the wound like injury No.1. He did

not find any dust or earth on injury No.1. No earth containing blood was taken into possession from the alleged place of occurrence in order to show that infact blood from injury No.1 of the prosecutrix fell on the field where she was raped. The doctor did not find any dust or earth on injury No.1 on the person of prosecutrix. This falsifies the story of the prosecution that during the process of rape, the prosecutrix sustained injuries on her head and other parts of the body. PW-6 Dr. Maulshree Lata has stated that there were no marks of struggle on the private parts of the subject. The tenor of statement of prosecutrix does indicate that she resisted from the very beginning. In Ex. PW-6/A MLC of prosecutrix the doctor has opined her to be habitual to intercourse, last date of coitus cannot be ascertained. The absence of struggle marks on the private parts of prosecutrix creates suspicion in the prosecution story. In MLC Ex.PW-4/A of accused no mark of struggle, scratch was found on the person of the accused

20. The manner in which prosecutrix was allegedly carried away by the accused and then raped also creates suspicion. It is story like a superman lifting a resisting woman in one hand, carried her ½ K.M. away and raped her. In the prosecution case even remotely there is no in whisper about the antecedents of the accused. It is not a case where statement of the prosecutrix is sufficient to bring home the charge. The statement of prosecutrix does not inspire confidence. The statement of prosecutrix is full of improbabilities and contradictions. The statement of prosecutrix has not been corroborated by other evidence on record. The prosecution has failed

to prove the case beyond reasonable doubt against the accused. The possibility of accused having been falsely implicated in the case cannot be ruled out in view of his defence. The trial Court misinterpreted the evidence on record and has drawn wrong inference from the material on record and therefore, finding of conviction and sentence of accused under Section 376 IPC recorded by trial Court is not sustainable and is accordingly set aside.

21. The result of the above discussion is the appeal is allowed. Judgment of conviction and sentence dated 23.5.2000 passed by learned Special Judge, Mandi in Sessions Trial No.29 of 1997 is set aside. The accused is acquitted of the charge. The fine deposited by the accused be refunded to him.

(Kuldip Singh)
Judge.

July 5, 2007
(sks)